

BENJAMIN F. HAINES AND OTHERS, }
 vs. } DECEMBER TERM, 1853.
 MORDECAI HAINES AND OTHERS. }

[PARTITION OF REAL ESTATE—SPECIFIC PERFORMANCE.]

In a proceeding for the partition of the real estate of an intestate, two of his children, to whom he had in his lifetime given certain portions of his estate, and of which they had taken possession, and made expensive improvements thereon, under the promise or agreement of their father that the property should be theirs, were made *defendants*, and they insisted that the land so claimed and possessed by them was not liable to partition. **HELD—**

That under the case as presented, the parties claiming the lands being *defendants*, and not asking the active interposition of the court in their favor, partition of these lands should not be decreed.

A much weaker case will constitute a good defence than would be required if the parties were complainants, asking the active interposition of the court in their favor; they are not bound to make out a case which would entitle them to the specific performance of the agreement set up in their answers. To constitute a valuable consideration, it is not necessary that money should be paid; if it be expended on the property on the faith of the contract, it constitutes a valuable consideration.

Money expended in the improvement of land on the faith of the contract constitutes a consideration on which to ground a claim for specific performance. A court of equity will not decree the specific performance of a mere voluntary agreement.

[The facts of this case are sufficiently stated in the following opinion of the Chancellor, which was delivered on the 22d of February, 1854.]

THE CHANCELLOR:

This is a bill filed by the complainants in February, 1849, for a partition of the real estate whereof Nathan Haines died seized in the year 1848.

Although the deceased executed a will, as stated in some of the answers, it was not attested so as to pass real estate, and as to that, therefore, he died intestate, and the question presented by the proceedings, and to which the argument made